

## **MEETING RECORD**

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Thursday, May 26, 2004, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Jon Carlson, Eugene Carroll, Gerry Krieser, Roger Larson, Dan Marvin, Melinda Pearson, Lynn Sunderman, Mary Bills-Strand and Tommy Taylor. Marvin Krout, Ray Hill, Steve Henrichsen, Mike DeKalb, Ed Zimmer, Brian Will, Duncan Ross, Becky Horner, Tom Cajka, Greg Czaplewski, Derek Miller, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

**STATED PURPOSE OF MEETING:** Regular Planning Commission Meeting

Chair Mary Bills-Strand called the meeting to order and requested a motion approving the minutes for the regular meeting held May 12, 2004. Motion for approval made by Carlson, seconded by Carroll and carried 8-0: Carlson, Carroll, Krieser, Marvin, Pearson, Sunderman, Bills-Strand and Taylor voting 'yes'; Larson abstaining.

Bills-Strand then requested a motion approving the minutes for the special meeting held May 19, 2004, on the Comprehensive Plan Annual Review and the Capital Improvements Program/Transportation Improvement Program. Motion for approval made by Carroll. Carlson moved to amend his comments on page 34 regarding the LES Capital Improvements Program, seconded by Marvin and carried 6-1: Carlson, Carroll, Krieser, Larson, Marvin and Bills-Strand voting 'yes'; Taylor voting 'no'; Pearson and Sunderman abstaining. Main motion, as amended, carried 6-0: Carlson, Carroll, Krieser, Marvin, Bills-Strand and Taylor voting 'yes'; Larson, Pearson and Sunderman abstaining.

### **CONSENT AGENDA**

### **PUBLIC HEARING & ADMINISTRATIVE ACTION**

### **BEFORE PLANNING COMMISSION:**

May 26, 2004

Members present: Carlson, Carroll, Krieser, Larson, Marvin, Pearson, Sunderman, Bills-Strand and Taylor.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 04034; CHANGE OF ZONE NO. 04031; SPECIAL PERMIT NO. 04023, FLAT IRON CROSSING COMMUNITY UNIT PLAN; CHANGE OF ZONE NO. 04033; USE PERMIT NO. 94B; SPECIAL PERMIT NO. 1763A; SPECIAL PERMIT NO. 04021; SPECIAL PERMIT NO. 04022; SPECIAL PERMIT NO. 04024; COMPREHENSIVE PLAN CONFORMANCE NO. 04003; ANNEXATION NO. 04008; and STREET AND ALLEY VACATION NO. 04004.**

**Item No. 1.1, Change of Zone No. 04034; Item No. 1.2a, Change of Zone No. 04031, Item No. 1.2b, Special Permit No. 04023, Item No. 1.3a, Change of Zone No. 04033, Item No. 1.3b, Use Permit No. 94B and Item No. 1.8, Comprehensive Plan Conformance No. 04003,** were removed from the Consent Agenda and scheduled for separate public hearing.

Marvin moved to approve the remaining Consent Agenda, seconded by Larson and carried 9-0: Carlson, Carroll, Krieser, Larson, Marvin, Pearson, Sunderman, Bills-Strand and Taylor voting 'yes'.

This is final action on Special Permit No. 1763A, Special Permit No. 04021, Special Permit No. 04022 and Special Permit No. 04024, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

**CHANGE OF ZONE NO. 04034**  
**FROM AGR AGRICULTURAL RESIDENTIAL**  
**TO R-3 RESIDENTIAL,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT S. 66TH STREET AND HIGHWAY 2.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION**

May 26, 2004

Members present: Marvin, Krieser, Carlson, Larson, Sunderman, Taylor, Pearson, Carroll and Bills-Strand.

Staff recommendation: Approval.

Ex Parte Communications: None.

This application was removed from the Consent Agenda and had separate public hearing due to a letter received from the Country Meadows Homeowners Association.

Brian Will of Planning staff submitted the letter from the President of Country Meadows Homeowners Association.

Proponents

1. **Peter Katt** appeared on behalf of the applicant, **Apple's Way**. At the time the property owner applied for this change of zone, notice of the change of zone application was sent to the Country Meadows Homeowners Association. A representative of the Homeowners Association contacted the applicant Sunday night, who was headed out of town. The applicant has agreed to meet with the Homeowners Association and Katt requested a two-week continuance until June 9, 2004.

There was no testimony in opposition.

Larson moved to defer two weeks, with continued public hearing and administrative action scheduled for June 9, 2004, seconded by Carlson and carried 9-0: Marvin, Krieser, Carlson, Larson, Sunderman, Taylor, Pearson, Carroll and Bills-Strand voting 'yes'.

**CHANGE OF ZONE NO. 04031**  
**FROM I-1 INDUSTRIAL AND R-4 RESIDENTIAL**  
**TO R-4 RESIDENTIAL AND P PUBLIC USE,**  
**and**  
**SPECIAL PERMIT NO. 04023,**  
**FLAT IRON CROSSING COMMUNITY UNIT PLAN,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT NO. 33RD AND APPLE STREET.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

May 26, 2004

Members present: Marvin, Krieser, Carlson, Larson, Sunderman, Taylor, Pearson, and Bills-Strand; Carroll declaring a conflict of interest.

Staff recommendation: Approval.

Ex Parte Communications: None.

These applications were removed from the Consent Agenda and had separate public hearing due to the submittal of a new condition of approval by the Planning staff.

Becky Horner of Planning staff noted that the waiver of street trees has been rescinded by the applicant. There is no longer a request to waive street trees.

Horner advised that she did have the opportunity to speak with the representative for the property owner to the north this morning, who clarified some of their future intent for use of the property, and staff would like to add a condition of approval that a 6' high opaque fence be

installed along the north property line until the property to the north potentially develops to residential.

### Proponents

**1. Brian Carstens** presented the application on behalf of the applicant for 34 attached units (17 duplex buildings) located immediately west of the old Hyland Bros. Lumber and located on part of the old abandoned railroad right-of-way. To the south is Peter Plan Park and the existing bike trail. The applicant is proposing 34 dwelling units with a detention cell along 30<sup>th</sup> Street, while keeping the bike trail pretty much intact. They will be putting in a parking lot to provide additional off-street parking for patrons of the park. The applicant has been working with Urban Development and the government in terms of trading property. The applicant has no objection to the conditions of approval, except the condition added today requiring the fence. There is already a 6' high chain link fence existing on that property to the north and this development will be lowering the street approximately two feet below the property line. They will be able to put some street trees underneath some power lines but they do not want to be required to install additional screening. The backs of the buildings face the rear yard and the fronts are facing the park.

**2. Larry Albers** appeared on behalf of Kingery Construction Company, the owner and tenant of the property located immediately to the north, generally in support of the proposal. However, there is a concern and inaccuracy in the report which has generated the new condition of approval requiring the fence. Analysis #8 on page 4 indicates that the property owner to north is intending to change to residential only after this development is proven to be successful. He also pointed out that Analysis #9 indicates that the "...Health Department is concerned about the industrial zoning designation to the north. Since the area is presently unoccupied, with the exception of the building to the east of the property used by the Nebraska Game and Parks Commission, and the neighbor is likely to change the zoning to residential in the near future, Planning staff believes the risk factor is minimal. ...". Albers pointed out that Kingery Construction has had that property as their construction yard for over 30 years. The Abels used it as a construction yard many, many years before that. There are fuel tanks and heavy equipment and trucks that go in and out. There is currently a chain link fence. There are children that will climb over the fence and it happens particularly at night. Kingery has expressed the concern early on with the applicant and staff that there be adequate buffering, whatever that is, and Kingery is concerned whether the existing fence is going to be sufficient. These are probably going to be families with children and there will be the temptation for the children not to just play in the park. The Kingery's want some sort of additional buffering for the safety.

Larson inquired whether the requirement for the fence is a requirement of the developer or the property owner to the north. Horner stated that it would be a requirement of this applicant.

She has asked that the landscape plan be revised to show the fence. Albers wants to make sure the opaque fence is in addition to the fence that is there now.

**3. Marc Wullschleger** appeared on behalf of the Urban Development Department. They have worked with the applicant for over two years on this project and will be supporting it financially with some federal funds. Urban Development would love to see the I-1 zoning changed to residential. This is where most of the complaints come from around the city where industrial backs up to residential. The character of the neighborhood has changed over the years. Urban Development believes this is very appropriate and will add some units to our affordable new construction housing supply. The price range will be around \$130,000.

Wullschleger believes the fence is a good idea.

There was no testimony in opposition.

Taylor inquired whether staff believes that the fencing will be sufficient with the lowering of the sidewalk. Horner could not say with 100% certainty that people might not get over it, but Planning is requesting an opaque fence (wood or vinyl) because it would be more difficult to climb. She is specifically not asking for chain link fence so that it would be more difficult to get across.

Carlson thinks we're going to end up with a "no man's land" between the chain link and the opaque fence. Horner stated that the chain link fence is on the property line. She does not know exactly where the applicant will propose putting the opaque fence. She does not anticipate, however, that there would be very much room between the two fences.

Bills-Strand suggested that the opaque fence will make it difficult to see the kids and be able to call out at them to get them off the property. Wouldn't it be easier to see the kids if it was chain link?

Pearson noted that the condition requires that the fence be located along the north property line. If the existing fence is along the north property line, then they should be right next to each other. Could we amend the condition to require that they replace the existing fence with a 6' high wood fence? Horner stated that the existing chain link fence belongs to the property owner to the north, and she believes they want to keep their fence.

Marvin thinks that if the kids are determined to get into the property, they will be able to get around a wood fence.

Larson inquired as to whose responsibility it is to keep the kids out of the industrial area. It is not the responsibility of the owner of the industrial property?

Response by the Applicant

Carstens suggested that one other plus to having the roadway there is that we are putting in private lighting that will help illuminate that area. They are probably jumping the fence now because it is dark there. He believes that having a view to that area will be more of a security enhancement than putting in the fence. If required, Carstens pointed out that the fence would be immediately north of the dwelling units—not along the western portion. It would be adjacent to Lots 1 to 34.

**CHANGE OF ZONE NO. 04031**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

May 26, 2004

Carlson moved approval, seconded by Krieser and carried 8-0: Marvin, Krieser, Carlson, Larson, Sunderman, Taylor, Pearson, and Bills-Strand voting 'yes'; Carroll declaring a conflict of interest. This is a recommendation to the City Council.

**SPECIAL PERMIT NO. 04023**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

May 26, 2004

Taylor moved to approve the staff recommendation of conditional approval, deleting the new Condition #1.2.2 requiring the fence, seconded by Larson.

Carlson commented that the idea of having the fences back to back is strange. He believes that the property is going to benefit just from this change in general, with the street there. He sees no overwhelming benefit in terms of cost in putting the fences back to back.

Motion for conditional approval, as set forth in the staff report dated May 7, 2004, carried 8-0: Marvin, Krieser, Carlson, Larson, Sunderman, Taylor, Pearson, and Bills-Strand voting 'yes'; Carroll declaring a conflict of interest. This is a recommendation to the City Council.

**CHANGE OF ZONE NO. 04033**

**FROM O-3 OFFICE PARK TO**

**B-2 PLANNED NEIGHBORHOOD BUSINESS**

**and**

**USE PERMIT NO. 94B,**

**ON PROPERTY GENERALLY LOCATED**

**WEST OF N. 26<sup>TH</sup> STREET AND SOUTH OF**

**KENSINGTON DRIVE.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

May 26, 2004

Members present: Marvin, Krieser, Carlson, Larson, Sunderman, Taylor, Pearson, Carroll and Bills-Strand.

Staff recommendation: Approval of the change of zone and conditional approval of the use permit amendment.

Ex Parte Communications: None.

These applications were removed from the Consent Agenda and had separate public hearing due to a letter received with concerns about drainage.

Proponents

**1. DaNay Kalkowski** appeared on behalf of **St. Elizabeth Community Health Center**, owner of the office zoned property located west of 27<sup>th</sup> Street and South of Kensington Drive. Kalkowski distributed a motion to amend the conditions of approval on the use permit and an exhibit. The applicant met with the four neighbors that abut the relevant portion of the property affected by this change. One of the major issues was a drainage question. The neighbors were concerned about the drainage swale that runs east of their lots and along the west side of this property, basically the 50' setback area down along the back of the lots. They are concerned about the amount of water and drainage that flows down that area in a major storm event. The applicant committed to review the grading plan and to look at maximizing the amount that could drain over to N. 26<sup>th</sup> Street and reduce the amount that this project drains back to the drainage swale. Public Works was supportive of this grading plan change and the plan was mailed to the neighbors. The revised grading plan shows that a majority of the drainage from this commercial area can be diverted over to 26<sup>th</sup> Street, which reduces the amount that is draining back to the swale. The swale does not drain a huge area in the minor storm event. In the event of a major storm, the detention pond for the commercial area north of Kensington Drive is sufficient to overflow the detention. Then there would be water that runs down the drainage swale, but that is the way it is designed to work. Kalkowski stated that the applicant has been able to minimize the amount of water coming from this project and contributing to that in the major storm event.

Kalkowski requested to add a condition of approval to revise the grading plan to maximize the drainage that goes over to 26<sup>th</sup> Street. She also indicated that staff is in agreement.

The other issue is Condition #2.1.1.3, which requires a 60% screen up to 10' high. Kalkowski stated that the applicant had also offered to construct a wall built of the same materials as the building to provide some further screening of the drive-through area.

**2. Carol Brown**, 2201 Elba Circle, testified in support. She knows what is proposed for this area and she thinks it is an excellent idea. It is close to the Autumn Ridge Medical Center and close to an elderly complex. They have a nice drainage in that property. However, she is concerned about the drainage on the other side of Superior Street which is overgrown with trees and shrubbery. She would think that that nice drainage area on the north side of

Superior behind 26<sup>th</sup> flows very well, but once it gets across Superior Street behind IHOP and Rod Kush's warehouse, it is slowed down because that ditch is so overgrown and full of trash. She would like the city to clean that up and dredge it to allow a better flow of drainage from one area to the other.

**3. Leroy Ang**, 5330 No. 25<sup>th</sup>, testified in support. He also agreed with Carol Brown that some of the drainage should be cleaned out.

There was no testimony in opposition.

Dennis Bartels of Public Works agreed with the proposed amendments. With respect to the drainage channel to which Carol Brown referred, it is downstream, on private property and is privately owned and maintained. The city does not have responsibility to maintain that ditch and the city does not have authority to clean out that ditch. Bartels believes that it is far enough downstream that it does not affect the drainage problems on this application.

But, as part of the development of that land, Carlson assumes proper maintenance of the detention is part of the owner's responsibility. Bartels stated that the detention is on the upstream. The ditch that Carol Brown is concerned about is from Superior Street south. Part of the ditch is in developed property and part of it is still on an irregular tract where the city has not taken any zoning action.

Bills-Strand suggested that the new floodplain standards recently adopted require that one property owner cannot cause water to flow onto someone else's property. Bartels indicated that the new standards pertain to new development.

Marvin believes the owner could be required to kill the weeds. Bartels agreed that there is an ordinance against the weeds and vegetation, but he is not sure of all of the steps that would be required to force the property owner to do that. Public Works does not have the authority to order that a private ditch be cleaned up.

**CHANGE OF ZONE NO. 04033**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

May 26, 2004

Carlson moved approval, seconded by Taylor and carried 9-0: Marvin, Krieser, Carlson, Larson, Sunderman, Taylor, Pearson, Carroll and Bills-Strand voting 'yes. This is a recommendation to the City Council.



**USE PERMIT NO. 94B**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

May 26, 2004

Taylor moved to approve the staff recommendation of conditional approval, with the amendments proposed by the applicant, seconded by Carlson and carried 9-0: Marvin, Krieser, Carlson, Larson, Sunderman, Taylor, Pearson, Carroll and Bills-Strand voting 'yes. This is a recommendation to the City Council.

**COMPREHENSIVE PLAN CONFORMANCE NO. 04003,  
AN AMENDMENT TO THE UNIVERSITY PLACE  
REDEVELOPMENT PLAN, ON PROPERTY LOCATED  
AT 2436 NORTH 48TH STREET.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

May 26, 2004

Members present: Marvin, Krieser, Carlson, Larson, Sunderman, Taylor, Pearson, Carroll and Bills-Strand.

Staff recommendation: A finding of conformance with the Comprehensive Plan.

Ex Parte Communications: None.

This application was removed from the Consent Agenda and had separate public hearing at the request of Bills-Strand.

Proponents

**1. Wynn Hjermstad of the Urban Development Department** advised that Urban Development had authority to purchase this property under the redevelopment plan and has already purchased the property. This amendment to the redevelopment plan is the next step which gives Urban Development authority to clear the site and proceed with the project.

Bills-Strand explained that she had this removed from the Consent Agenda because she has been asked whether the city is paying fair market value for the property and how much it is going to cost to do the demolition. Hjermstad assured that the city did pay fair market value but she did not know the exact amount. An appraisal is required and the city is required to pay fair market value. In terms of demolition, they will not be letting bids until this amendment has been approved. It will go through the standard city bidding process.

Bills-Strand inquired as to why nothing has happened on the Green property, which has already been demolished. Hjermstad advised that the city has made an offer and did amend the plan to get authority to purchase, and they are still in negotiations on the Green property. The Northeast Printers Building negotiations just happened to move faster.

There was no testimony in opposition.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

May 26, 2004

Marvin moved a finding of conformance, seconded by Krieser and carried 9-0: Marvin, Krieser, Carlson, Larson, Sunderman, Taylor, Pearson, Carroll and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

**CHANGE OF ZONE NO. 04028**  
**FOR A SPECIAL SIGN OVERLAY**  
**DISTRICT IN THE B-4 LINCOLN CENTER**  
**BUSINESS DISTRICT FOR THE**  
**GRAND THEATRE**  
**ON PROPERTY GENERALLY LOCATED**  
**AT 11<sup>TH</sup> AND "P" STREETS.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

May 26, 2004

Members present: Marvin, Krieser, Carlson, Larson, Sunderman, Taylor, Pearson, Carroll and Bills-Strand.

Staff recommendation: Approval.

Ex Parte Communications: None.

Proponents

1. **Ed Zimmer** of Planning staff presented the application. This application is not common, but there is a provision in the zoning code that allows creation of special sign districts, such as at Haymarket and Haymarket Ballpark. It has special characteristics that do not fit in the standard code. This proposal would allow the creation of special sign criteria for the new theater project. The proposal is really quite moderate with what the B-4 would permit. It was a specific recommendation of the Urban Design Committee that four signs would be better than two, with better scaled signs along "P" Street, or the entrance side. The design was carefully worked out and negotiated.

There was no testimony in opposition.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

May 26, 2004

Carroll moved approval, seconded by Larson and carried 9-0: Marvin, Krieser, Carlson, Larson, Sunderman, Taylor, Pearson, Carroll and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

**CHANGE OF ZONE NO. 04029**  
**FROM AG AGRICULTURAL AND H-3 HIGHWAY COMMERCIAL**  
**TO R-1 RESIDENTIAL AND H-3 HIGHWAY COMMERCIAL,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT 82<sup>ND</sup> AND WEST "O" STREET (EMERALD)**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

May 26, 2004

Members present: Marvin, Krieser, Carlson, Larson, Sunderman, Taylor, Pearson, Carroll and Bills-Strand.

Staff recommendation: Approval.

Ex Parte Communications: None.

Proponents

**1. Becky Vandenberg**, appeared on behalf of the applicant, **Emerald SID #6**, seeking this request to change the zoning on a parcel that the SID actually owns, known as Lot 1 on the northeast corner in Section 23-10-5. That piece of property has been owned by the SID since 1973. They have two lagoons which are both ready to work, but they have never used the second one. Thus they had an extra parcel of 5 acres. The SID had been approached by another property owner who wanted to purchase the land more than three years ago. The SID has no use for that land. The purchaser has agreed to put up a fence and work in accord with the SID as far as aesthetics, etc.

Vandenberg advised that every lot on "O" Street and 84<sup>th</sup> Street was changed to a commercial zoning in the past. Whenever Lincoln moved out and took Emerald into the three-mile, it was zoned to match the county zoning. There are many residences on this commercial property. They are not asking that all of the lots on "O" Street be changed, but the majority of the properties with residences are requesting the change.

The request includes:

Lot 12 and 11 in 27-10-5 to be changed from H-3 to R-1

Lot 47 and 46 in 23-10-5 and Lot 38, 14, 13, 12 and 17 in 26-10-5 to be changed from H-3 to R-1

Opposition

**1. JoAnn Benes**, who lives nearby on a farm at 6600 West A Street, testified in opposition. She is not in favor of changing the zoning along West "O" at Emerald. She purchased her property there with the intent of having a small antique or collectibles shop in the future. Since West "O" will be widened from the railroad bridge east (all of the property east of that is now

H-3), it will be all H-3 to Emerald. She believes this application represents spot zoning. There are more businesses between Emerald and the railroad track. Why would we want to spot zone a few houses along West "O" Street? She thinks it should continue to be H-3 for added growth and use in the future. This will affect her property as well as her son's property, who has a trucking business. It will affect the setbacks. She sees this as a potential problem for any commercial property next to a residential lot. She did not receive notice of any meetings regarding this change. She was not part of this planning. The water in the town has gone from 10% nitrates to 11%. And the state law says that the maximum should be 10%. They did not receive notice of the increase in the nitrates. She has put in a filtering system. She found out about this change of zone application through her tenants. She does not believe she is billed for her water timely. What about the people in between? She would like to eliminate the water service by the SID. She would like to see this delayed until a meeting is organized to include all property owners. At this time for tax purposes, the property is valued based on the use. She has no problem with other developments in the area, but she believes the water issue is the major issue.

#### Staff questions

Carroll inquired as to the purpose to change the H-3 on the south side of West "O" to R-1 when across the street is H-3. Mike DeKalb of Planning staff explained that the staff is processing this change at the request of the applicant, and that the question should be answered by the applicant. It is a very unique circumstance. As he understands the application, the intent was to gain some stability for the neighborhood, similar to downzoning in the Lincoln neighborhoods. The applicants are requesting this change for the stability of their existing patterns of land use.

Carroll wondered whether staff had considered any zoning other than R-1? DeKalb's response was that the applicant did not ask for anything else. They have requested R-1 to match the existing residential lot sizes. Other residential districts might work, but they would not be able to meet AGR provisions.

As far as the history of the zoning, DeKalb advised that all of the property was zoned C—Commercial under the county zoning back in the 1950's, which allowed both commercial and residential uses. In 1970, it changed to H-2 Highway Commercial, with both commercial and residential being allowed uses. In 1979, during the zoning update, zoning

districts that allowed both commercial and residential uses were removed. Since 1979, these residences have been nonstandard uses. The applicant is attempting to stabilize what happens on their lots and the lots next door.

Pearson inquired what other uses are allowed in H-3. DeKalb explained that residential uses are not listed in H-3, but are allowed as a nonstandard use. H-3 also allows restaurants, gas stations, auto businesses, salvage, etc.

Bills-Strand inquired as to how the residential zoning impacts a lot right next door that is H-3. How is it going to now impact their setbacks? DeKalb stated that everything is the same except for the side yard abutting residential, which might change from zero to 15'. Other than that, there will be no change.

#### Response by the Applicant

Vandenberg clarified that this change of zone request does not include the property owned by Ms. Benes. This is not the forum to discuss anything that has to do with the water or the business of the SID. If Ms. Benes has problems with the water bill, she needs to contact the SID clerk. The water problem is nothing new. It has been around for a lot of years. The nitrate level is high because the wells were sunk on an open range chicken farm. Ms. Benes' son's business is in the back yard of another residential property. The owners of the residences included in this application did not know they were zoned commercial until this year. They were appalled to know they would not be able to rebuild if their homes were destroyed. The applicant is willing to grandfather any business that is already there. Ms. Benes does not live in Emerald. That is her rental property. The SID is in the process of looking for another well site. Every property that is included in this change of zone request has been spoken with and each property owner is well aware of this change of zone request. We should be recognized as residents of Emerald and have the same ability as anyone else in a residential area.

#### **ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

May 26, 2004

Carlson moved approval, seconded by Taylor.

Marvin stated that he will support the staff recommendation. The city has tried to make the best thing out of something that isn't perfect and we're trying to accommodate homeowners and business owners. While he does not think this is perfect, he thinks it is the best that can be done.

Bills-Strand stated that she does not like to see different zones next to each other. However, she will support it since none of the owners of the properties in between are here in opposition.

Carroll stated that he will vote against the motion. He supports the AG change, but he believes the H-3 across the street on the north side of West "O" should be mirrored. This is spot zoning those small lots on the south side and inflicting new specifications on the commercial property owners with residential right next door. R-1 makes requirements that are

necessary for that area. He does not believe the change is necessary for the residential properties.

Taylor stated that he is in favor because it is more of a problem for the residential property owners.

Bills-Strand indicated that she could support the AG, but not the H-3 because there are businesses that abut the property line and it will impact their ability to rebuild.

Larson has no problem with the change north of "O" Street, but changing the zoning on the south side doesn't make any sense. It's just a hodge-podge. It should mirror what is across the street, which is H-3.

Pearson understands that a lot of the people didn't know that the zoning was changed in the past. If this change is made, they can't rebuild. It is just fair to let them stay the way they are. They don't want to make anyone else residential. They just want to be allowed to build their house if it burns down.

Carlson stated that he made the motion because he thinks that the existing use should be prioritized over the speculative use or theoretical use. It is more important to have zoning that protects the existing owner of the property and existing use pattern. He does not think there is much of a conflict here. But given the choice, the existing land use should be respected over what a speculative purchase might allow. The protection it offers the existing property owner is more important than the change in the setback.

Motion to approve failed 4-5: Marvin, Carlson, Taylor and Pearson voting 'yes'; Krieser, Larson, Sunderman, Carroll and Bills-Strand voting 'no'.

Rick Peo of the City Law Department advised the Commission that nonstandard uses can be rebuilt. They only have to comply with the minimum requirements as to front yard, side yard, rear yard, height and unobstructed open space of the district in which they are located. Peo believes that the H-3 and R-1 district requirements are basically identical. He does not see any provision that would prohibit these residences from being rebuilt even if the property remains H-3. The only thing it does is to put some stability to the residential uses, but he does not believe it affects the right to rebuild.

Carroll moved to approve the change of AG to R-1 and AG to H-3 on the north side of West "O" Street, seconded by Larson and carried 8-1: Marvin, Krieser, Larson, Sunderman, Taylor, Pearson, Carroll and Bills-Strand voting 'yes'; Carlson voting 'no'.

Carroll moved to deny the change from H-3 to R-1 on the south side of West "O" Street, seconded by Larson and carried 5-4: Krieser, Larson, Sunderman, Carroll and Bills-Strand

voting 'yes'; Marvin, Carlson, Taylor and Pearson voting 'no'.

This is a recommendation to the City Council.

**CHANGE OF ZONE NO. 04017**  
**FROM AGR AGRICULTURAL RESIDENTIAL**  
**TO R-3 RESIDENTIAL;**  
**SPECIAL PERMIT NO. 04011,**  
**BOULDER RIDGE COMMUNITY UNIT PLAN,**  
**and**  
**PRELIMINARY PLAT NO. 04008, BOULDER RIDGE,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT SOUTH 84TH STREET AND PINE LAKE ROAD.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

May 26, 2004

Members present: Marvin, Krieser, Carlson, Larson, Sunderman, Taylor, Pearson, Carroll and Bills-Strand.

Staff recommendation: Deferral until June 9, 2004.

Ex Parte Communications: None.

Proponents

**1. Peter Katt** confirmed that the applicant is requesting a two-week continuance.

Marvin moved to defer, with continued public hearing and administrative action scheduled for June 9, 2004, seconded by Carroll and carried 9-0: Marvin, Krieser, Carlson, Larson, Sunderman, Taylor, Pearson, Carroll and Bills-Strand voting 'yes'.

**\*\*Break\*\***

**COUNTY CHANGE OF ZONE NO. 04030**  
**FROM AG AGRICULTURAL TO AGR AGRICULTURAL RESIDENTIAL**  
**and**  
**COUNTY PRELIMINARY PLAT NO. 04015,**  
**RED CEDAR RIDGE,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT SO. 82ND STREET AND ROCA ROAD.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

May 26, 2004

Members present: Marvin, Krieser, Carlson, Larson, Sunderman, Pearson, Carroll and Bills-Strand; Taylor absent.

Staff recommendation: Denial.

Ex Parte Communications: None.

Proponents

1. **Tom Huston**, 233 S. 13th Street, Suite 1900, appeared on behalf of the property owner, Alan Baade. Mr. Baade owns approximately 120 acres at the intersection of S. 82<sup>nd</sup> and Roca Road. Baade acquired the property in 1984 and tried to farm it for a number of years, but it is marginal ag land. In the year of 2000, Mr. Baade met with the staff about the project envisioned for this corner. He submitted a Comprehensive Plan Amendment in the year 2001 to reflect low density residential on this property. In April of 2002, the Planning Commission voted to defer action on this proposed amendment, among many other amendments, until the 2025 Comprehensive Plan was adopted. That was the first deferral. In October, 2002, the Planning Commission voted to defer action until the three acreage studies were completed. And now, the Planning staff is again recommending deferral, or denial, based upon the lack of those studies being completed or adopted. It has been 20 months since the last deferral and there has been no action on the studies.

Huston suggested that since those studies have not been adopted, this application should be analyzed in terms of the existing rules. The staff analysis indicates that the application for water service has been approved by Rural Water District #1. The County Health Department has approved and has no problems with the size of the lots for compliance with waste disposal. The staff report indicates that this property is located on a surfaced road and has capacity to handle the traffic. The Comprehensive Plan indicates that the property is not prime ag land, with no floodplain and no animal confinement interference or restrictions. The staff report also indicates that there are surrounding acreage uses. The Hickman Ridge Estates, containing 33 acreage lots, which is located immediately southwest, was approved in 2002. There are other assorted acreages in the area that have less than 20 acres as the minimum lot size. Huston submitted that this proposal meets the requirements of the Comprehensive Plan for acreage development.



Huston noted that the staff report refers to the Hickman Horizon Plan, which was originally proposed as an amendment to the Comprehensive Plan that was never adopted. It was to allow Hickman to exercise land use jurisdiction one mile beyond their extraterritorial jurisdiction and that was never adopted. Huston submitted that the Hickman Horizon Plan is a “red herring” and should not be relevant to consideration.

Huston pointed out that the interior public streets will be paved. The staff analysis also tried to compute a raw score under the proposed performance standards with a positive score; whereas, The Preserve down the street that had a negative score was approved. Huston acknowledged that the applicant did seek a waiver of block length; however, the applicant is willing to revise the preliminary plat to show street connection that will reduce the development from 35 to 34 lots.

Huston noted that the staff report indicates that under a pure density analysis, this property would be entitled to 39 dwelling units without a community unit plan, and with a community unit plan, would be allowed 47 dwelling units. This application proposes 34 dwelling units. Huston requested that this application not be deferred; that it should be recommended for approval to the County Board. This applicant met with the staff over 3 ½ years ago and none of the studies are yet in place. If it was good farm ground, the owner would continue to farm it. It complies with all of the existing old rule standards.

### Opposition

**1. Kurt Kechely**, 7801 Roca Road, the property directly south of the proposed subdivision, testified in opposition. He represents 16 family households in the Roca Road area that oppose this development. They moved to this area, under the current rules, that required them to purchase 20 acres and they are questioning why there are exceptions to the Plan and why this development is even being considered. It was their understanding that the Comprehensive Plan was good for 20-30 years. They are concerned that we are not following a plan and that there are exceptions regularly brought forward. When is this going to end? The neighbors realize that there needs to be some development, but if this proposal is approved, the property across the street to the east of 82<sup>nd</sup> will be next and then go on down the road. Alan Baade is a developer. He does farm; however, Kechely believes Baade purchased this property to develop, not farm. Kechely tried to buy the property at the auction to keep it from being developed but the price went too high.

This application is not in conformance with the Comprehensive Plan; the county does not need further loss of farmland; there are multiple developments like The Preserve at 68<sup>th</sup> and Roca that are going to put some constraints on the water; there are constraints on enrollment at Norris School; there is a grass air strip at 7401 Roca Road and the owner has airplanes—his rights as a landowner are being questioned; Frank Mitchell, on 82<sup>nd</sup> Street, has a cattle operation; and Kechely moved into the country to be able to shoot his guns. Each town in this

area is opening up new developments--under their jurisdiction within their 1-mile radius--and there is enough building and expansion without branching outside of those 1-mile areas. The South Bypass is coming and if that occurs, it is going to bring Lincoln out that much faster. Kechely suggested that we should be focusing on the development between Lincoln and the Bypass, and development around the communities that have a plan.

In addition, Kechely stated that 68<sup>th</sup> Street does not handle the traffic flow and 82nd Street is not paved. He does not believe the infrastructure is in place to handle this growth. There must be planned development as opposed to these ad hoc approvals.

#### Staff questions

Marvin asked staff to respond to the "red herring" allegation regarding the Hickman Horizon Plan. Mike DeKalb of Planning staff stated that the Hickman Horizon Plan is an adopted element of Hickman's own Comprehensive Plan. The Planning Department has copies of it. Hickman has no jurisdiction beyond their one-mile. Hickman did ask that the Horizon Plan be adopted in the Lincoln-Lancaster County Comprehensive Plan, which was not done. It was suggested that they do more studies before they come forward with it. Lincoln-Lancaster County has a good neighbor policy, whereby if a development is within one mile of the town's jurisdiction, we ask for their comments. However, the Planning Department has not received any information from Hickman on this proposal. He does not believe it is a red herring.

#### Response by the Applicant

Huston noted that the Comprehensive Plan recognizes that at least 6% of our population has a desire to live on acreages. If we are going to defer any more acreage development until any of these studies are adopted, we are in effect creating a moratorium and it is unfair and wrong. His client has been patient for over 2.5 years while the Comprehensive Plan Amendment has been deferred. We need to get a decision. This property is not conducive to being good tillable farm ground. The water is not an issue--Rural Water District #1 has recommended approval. The staff report indicates that there are no confined farm feeding operations in the area and if there are, they are protected by state law. He finds it disingenuous when existing acreage property owners want to deny the same enjoyment to others. The old rules still apply and this project complies with those rules, meeting all of the substantive requirements for a recommendation of approval.

#### **COUNTY CHANGE OF ZONE NO. 04030**

#### **ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

May 26, 2004

Marvin moved to deny, seconded by Carlson.

Carlson believes Mr. Kechely gave an excellent presentation. His concerns about ad hoc acreage development are right on the mark. This development is indicative of a couple of things that are problematic that are going on county-wide. Hickman is trying to think long term and is trying to create an urban reserve. Carlson disagrees with the applicant's suggestion that we are running out of places to put acreages. He believes there are sufficient acreages designated to accommodate 6% of the population. We also have a cost of services study that shows that it is this type of ad hoc development that draws up the price in the county.

Marvin noted that the people across the road have 20-acre parcels and they are talking about the density issue.

Carroll agrees that this is not in conformance with the Comprehensive Plan. The cost of services showed exactly why these subdivisions cost so much to the city. We need to do a better job of designing them so that the costs are lower.

Motion to deny carried 5-3: Marvin, Carlson, Larson, Pearson and Carroll voting 'yes'; Krieser, Sunderman and Bills-Strand voting 'no'; Taylor absent. This is a recommendation to the County Board.

**COUNTY PRELIMINARY PLAT NO. 04015**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

May 26, 2004

Marvin moved to deny, seconded by Carlson and carried 5-3: Marvin, Carlson, Larson, Pearson and Carroll voting 'yes'; Krieser, Sunderman and Bills-Strand voting 'no'; Taylor absent. This is a recommendation to the County Board.

**CHANGE OF ZONE NO. 04035**

**FROM R-4 RESIDENTIAL TO O-3 OFFICE PARK;**

**USE PERMIT NO. 04001 FOR A CLUB AND MEDICAL OFFICE SPACE;**

**SPECIAL PERMIT NO. 04026, FOR A CLUB;**

**SPECIAL PERMIT NO. 1713C, AN AMENDMENT**

**TO THE ASPEN 3RD ADDITION COMMUNITY UNIT PLAN;**

**and**

**STREET & ALLEY VACATION NO. 04005**

**TO VACATE A PORTION OF ALLEN ROAD**

**RIGHT-OF-WAY,**

**ON PROPERTY GENERALLY LOCATED**

**AT STEPHANIE LAND AND PINE LAKE ROAD.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

May 26, 2004

Members present: Marvin, Krieser, Carlson, Larson, Sunderman, Pearson and Carroll; Bills-Strand declaring a conflict of interest; Taylor absent.

Staff recommendation: Approval of the change of zone; conditional approval of the use permit, special permit and community unit plan; and a finding of conformance with the Comprehensive Plan on the street vacation.

Ex Parte Communications: None.

Tom Cajka of Planning staff submitted a letter from Jan and Bill Norris in support.

Proponents

**1. Tom Huston** appeared on behalf the applicant, **Madonna Rehabilitation Hospital**. Madonna has been looking for a site for its proactive health and fitness facility. It is a health plaza with a combination of uses. This health plaza would bring together multiple disciplines and services in one structure to enable Madonna to further its mission. Madonna has been a leader in rehabilitation health services.

Huston submitted proposed amendments to the conditions of approval on the use permit, community unit plan and special permit. The neighbors requested that Madonna delete one of the connections from the roundabout to the east. That connection has been eliminated and Public Works is in agreement. The applicant is proposing to add some landscape berming area west of Norris Lane on the west side of the structure.

The third amendment deals with the parking. This was the toughest issue in dealing with this project because of the combination of uses. The site plan reflects 334 parking stalls based upon Madonna's projection of the nonconcurrent parking demands for this facility. 200 parking spaces will be required for the medical office portion. There is no exact formula when it comes to the health club, and it is a tough analysis. The staff did refer back to the analysis done for the YMCA at Densmore Park, and that parking lot was overbuilt and has created an unnecessary amount of runoff. Madonna is confident in its accurate depiction of the nonconcurrent parking demand. There is sufficient room to add 76 stalls if determined to be necessary at some point and the applicant does not object that the site plan be amended to reflect where those 76 stalls would be located. If Madonna determines, or it is determined through a complaint process, that there is parking on the streets, Madonna will build the additional parking stalls.

Pearson asked to see the location on the site plan where the additional parking stalls would be located.

Carroll inquired as to the trigger mechanism for that additional parking. Huston stated that the nonconcurrent parking provision under the parking section of the zoning ordinance does not have a good trigger mechanism--it does not have a mechanism to measure the parking demand for this kind of facility, either. It would be either through city inspection or city

enforcement. Typically it is a complaint process by the public. If there is a complaint, Huston would like the opportunity for Madonna to conduct a study of the peak time parking demands to determine the appropriate number of stalls to be constructed. The staff report indicates 410, which is just a best educated guess. Carroll suggested adding a condition that a parking study be done after one full year of operation. Huston hesitated to accept such a condition because if 334 is adequate, he is not sure they should be required to do a parking study. If we find out a year from now that we haven't built enough stalls, then they could conduct a study. It would be his concern to overbuild the parking lot from the outset. Carroll's concern is that they are budgeting construction dollars and they won't have the money to build the spaces if they are needed. Huston indicated that he would be receptive to adding some language to Condition #1.1.10 that the applicant would produce a parking study upon request of the city within 18 months.

Sunderman inquired whether the applicant is still requesting the waiver of the tangent length. Huston stated that that waiver request has been eliminated.

**2. Roger Ehlers**, 7226 Sugar Creek Circle, testified in support, if the proposed amendments submitted by the applicant are approved. The neighborhood and the developers have worked together and they solved two of their problems in about 5 minutes. It has been a real cooperative effort. There was a different proposal for this area a few months ago, and this is a much better proposal. It takes out all the apartments and leaves in the 10 units of housing. It is an attractive building. He has a little concern about the height of the building, but it will be a good sound buffer from Pine Lake Road. He is not sure the neighborhood would like the additional parking in the open area. The amendment to break off that road is important because one of the biggest concerns was traffic coming down into that area. That change will eliminate 95% of the traffic that could have come down into the residential area.

Marvin inquired whether Norris Lane will satisfy the west-bound traffic onto Pine Lake Road. Ehlers believes that it will. It will give the 10 new units an outlet. We were worried about the road from Stephanie Lane and with the break they won't be able to come down there.

There was no testimony in opposition.

#### Staff questions

Pearson inquired whether they can build the additional parking in Block 5 which is shown as an outlot. Tom Cajka of Planning staff advised that they would not be able to build a parking lot there without a special permit for parking in residential zoning or a change of zone to O-3. Cajka believes that the additional parking would be on the outlot. There is no room for additional parking next to the office building.

Carroll asked whether staff would be acceptable to requiring a parking study in 18 months. Cajka agreed; however, the applicant could do something as simple as checking the parking during peak times.

Marvin inquired about Outlot B. Cajka advised that Outlot B is open space for a buffer between the existing townhomes and the new facility.

**CHANGE OF ZONE NO. 04035**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

May 26, 2004

Marvin moved approval, seconded by Pearson and carried 7-0: Marvin, Krieser, Carlson, Larson, Sunderman, Pearson and Carroll voting 'yes'; Bills-Strand declaring a conflict of interest; Taylor absent. This is a recommendation to the City Council.

**USE PERMIT NO. 04001**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

May 26, 2004

Carroll moved to approve the staff recommendation of conditional approval, with the amendments requested by the applicant, and to add a condition that the applicant will conduct a parking study after 18 months of operation and provide it to the city, seconded by Marvin and carried 7-0: Marvin, Krieser, Carlson, Larson, Sunderman, Pearson and Carroll voting 'yes'; Bills-Strand declaring a conflict of interest; Taylor absent. This is a recommendation to the City Council.

**SPECIAL PERMIT NO. 04026**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

May 26, 2004

Carroll moved to approve the staff recommendation of conditional approval, with the amendment to Condition #3.3 requested by the applicant, seconded by Krieser and carried 7-0: Marvin, Krieser, Carlson, Larson, Sunderman, Pearson and Carroll voting 'yes'; Bills-Strand declaring a conflict of interest; Taylor absent. This is final action, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

**SPECIAL PERMIT NO. 1713C**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

May 26, 2004

Carroll moved to approve the staff recommendation of conditional approval, with the amendments requested by the applicant, seconded by Krieser and carried 7-0: Marvin, Krieser, Carlson, Larson, Sunderman, Pearson and Carroll voting 'yes'; Bills-Strand declaring a conflict of interest; Taylor absent. This is a recommendation to the City Council.

**STREET & ALLEY VACATION NO. 04005**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

May 26, 2004

Carroll moved a finding of conformance with the Comprehensive Plan, seconded by Krieser and carried 7-0: Marvin, Krieser, Carlson, Larson, Sunderman, Pearson and Carroll voting 'yes'; Bills-Strand declaring a conflict of interest; Taylor absent. This is a recommendation to the City Council.

**SPECIAL PERMIT NO. 04014,**

**WHISPERING CREEK COMMUNITY UNIT PLAN,**

**ON PROPERTY GENERALLY LOCATED**

**AT S. 112TH STREET AND OLD CHENEY ROAD.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

May 26, 2004

Members present: Marvin, Krieser, Carlson, Larson, Sunderman, Pearson, Carroll and Bills-Strand; Taylor absent.

Staff recommendation: Denial.

Ex Parte Communications: None.

Mike DeKalb of Planning staff submitted a letter from the applicant's attorney, requesting that this application be placed on pending. The applicant is interested in applying for a preliminary plat as opposed to a community unit plan. DeKalb also submitted a letter from Sandra Reiber in opposition, who believes the neighbors were misinformed about the change of zone last year in that they were lead to believe that the property would be developed into 20-acre lots.

Carlson moved to place on pending, non-date specific, seconded by Pearson and carried 8-0: Marvin, Krieser, Carlson, Larson, Sunderman, Pearson, Carroll and Bills-Strand voting 'yes'; Taylor absent.

The applicant was not present.

Opposition

1. **Sandy Reiber** testified in opposition. All of the neighbors are very angry about being mislead. Mrs. Heier called the neighbors last November when this was brought forth. She called every one of the neighbors the night before the hearing and told them that the property would be 20-acre plots and the reason they were doing this was because of family issues in dividing the property between the two sisters. That is why no one came to the hearing last November. The neighbors did not know it would be these three-acre plots. She is worried about the applicant's intent. She is fearful that they want to increase the density. She would

much prefer the 20 acres and she would have been here last November if she had known it was going to be 3-acre lots. She is worried about the lagoons. The soil across the street to the west is clay and it will not perc. She has a lagoon at the end of her driveway. She is worried about developing just "hither and yon" without thought for green space. Hidden Valley Golf Course is for sale. The other golf course between Pine Lake Road and Pioneers Blvd. Is slowly being done away with as they put houses in. She also believes that the map is misleading. The property is not one square mile. From 112<sup>th</sup> to 120<sup>th</sup> on Old Cheney Road is 3/4 of a mile. In addition, the map erroneously shows her property within the boundaries of this application. Her neighbors on Pine Lake Road are not here because they think this is a "done deal".

Marvin asked staff to respond to the "done deal" comment. DeKalb explained that this is a special permit application and the applicant is indicating a desire to come forward with preliminary plat. The property is already zoned AGR, so if they come forward with a preliminary plat that meets the minimum requirements of the subdivision ordinance, it may well be a done deal.

**SPECIAL PERMIT NO. 04020**  
**FOR A LIMITED LANDFILL**  
**ON PROPERTY LOCATED AT**  
**2861 WEST "O" STREET.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

May 26, 2004

Members present: Marvin, Krieser, Carlson, Larson, Sunderman, Pearson, Carroll and Bills-Strand; Taylor absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Proponents

1. **Gary Butts**, 2238 S. 48<sup>th</sup> Street, testified as the project manager. The staff report mentions that crushing is a potential noise and dust generator; however, Butts advised that there will be no crushing on this project. Everything will have already been crushed and rendered to size when delivered to this site. The staff report also mentions that a private firm has identified a wetlands on the project site. Butts does not know where that information came from, and there are no wetlands shown on the national wetlands inventory map that he reviewed. This application has also been reviewed by the Corps of Engineers and they have issued a letter and they are not requiring a 404 permit. With regard to a concern of the FAA,



Butts advised that he has already been in contact with them and this landfill project is of no concern of theirs because it is not an expansion or an addition to an existing landfill. He believes he will have a letter from the FAA next week satisfying that condition.

Carlson inquired as to the condition of the land when it is no longer operating as a landfill and how long it will be a temporary landfill. Butts stated that the operator that is going to operate and fill this land with construction debris is one of the largest excavators in Nebraska. They are going to fill it with road demolition debris and building demolition. Depending upon how fast they undertake the demolition projects, it could be three or six months. Once it is filled to a designated level with concrete debris, the rest of the fill will be 5-6 feet of dirt. It could all be filled and covered within 12 months or sooner. As soon as it is filled, it will be seeded with grass for erosion control.

There was no testimony in opposition.

#### Staff questions

Mike DeKalb of Planning staff clarified that the reference to wetlands is an error. There are no wetlands on the site.

Carlson inquired whether there is a time limit on this landfill operation. What is the control as far as the conditions to make sure it is covered and reseeded? DeKalb indicated that there is no proposed time limit, and the staff has not typically required a time limit because they are so volatile depending on the market for demolition projects; however, we have done time limits on excavation sites in the past. They will attempt to raise it to at grade with "O" Street. He believes that the conditions to comply with all state and federal regulations will assure the covering and reseeded. The Airport was concerned because it was directly in the flight path, so they want FAA sign-off, but the FAA does not consider demolition of rubble and debris to be a concern.

Pearson inquired whether anything will be able to be built on top of this site. DeKalb answered in the affirmative. Many of the demolition debris special permits have been along West "O" Street on the south side. The purpose of the special permit is to give public record of the concrete/masonry and difficult building conditions, and to make sure there is nothing put into the fill that should not be. It is zoned commercial and these sites generally end up converting to a commercial use such as a parking lot.

#### Response by the Applicant

**Tom Friedman**, owner of the property, clarified that this is not a refuse area. He has wanted to develop it for a long time. He owns the mini-storage directly behind this site and is wanting to raise the property so that he can put a commercial building on the property down the road. It lends itself to a small warehouse or a small plumbing company.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

May 26, 2004

Sunderman moved to approve the staff recommendation of conditional approval, seconded by Carroll.

Marvin indicated that he will not support the staff recommendation. We have entryway corridors on "O" Street and from what he has heard, this is not an egregious crime but he is philosophically opposed to putting a landfill on "O" Street. Last year the Council went through an "O" Street environs process and it is supposed to be developed to be more attractive. Putting up a wood fence for a landfill on "O" Street is not in the spirit of what the "O" Street plan is about.

Pearson agreed with Marvin.

Carlson moved to amend to add a condition that the permit have a 12-month time limit, seconded by Marvin. During that time, it will not be nice to look at. But once it is filled and reseeded, it will not be unsightly.

Pearson thinks that makes a lot of sense.

Motion to amend carried 8-0: Marvin, Krieser, Carlson, Larson, Sunderman, Pearson, Carroll and Bills-Strand voting 'yes'; Taylor absent.

Carroll stated that he will support it. It will not look nice for 12 months but it changes a piece of property which is nothing now, but which will be something they can build upon and make it look nice in the future. He believes it will eventually improve the property on the "O" Street corridor.

Marvin indicated that he will probably support it with the 12 month time limit.

Motion for conditional approval, with amendment to require a 12-month time limit, carried 8-0: Marvin, Krieser, Carlson, Larson, Sunderman, Pearson, Carroll and Bills-Strand voting 'yes'; Taylor absent. This is final action, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

**STREET VACATION NO. 04006**  
**TO VACATE THE NORTH 9'4" OF THE**  
**Q STREET RIGHT-OF-WAY GENERALLY**  
**LOCATED AT 9<sup>TH</sup> & "Q" STREETS.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

May 26, 2004

Members present: Marvin, Krieser, Carlson, Larson, Sunderman, Pearson, Carroll and Bills-Strand; Taylor absent.

Staff recommendation: A finding of conformance with the Comprehensive Plan.

Ex Parte Communications: None.

Proponents

**1. Greg Czaplewski** of Planning staff explained that this is a request from the Public Works Department to vacate this portion of right-of-way, based upon a contractual agreement that the city has with B&J Partnership, which is going to be purchasing the tenant space in the Haymarket Parking Garage.

Carroll referred to #7 of the analysis as to giving away the right-of-way instead of giving an easement. If the city is going to give them an easement, how hard would it be to get it back if the city wants the land for right-of-way? **Joel Pedersen of the Law Department** advised that this is related to the acquisition of a property which was voluntary for the construction of the Haymarket Parking Garage. The retail space on the first floor was part of the design of the garage which was done in concert with Urban Development and was done with city cooperation—not requested. The feeling was that the retail use fit in on this corner and helped the garage fulfill the design element in that it didn't look as much like a garage with that corner retail space. As a tradeoff, the city agreed to design this tenant space as part of the building. The agreement provided that it would be by easement for so long as the retail space was there. The connection is to the retail space. In event the retail space is no longer used as retail, then the potential is there for that to revert back for right-of-way. The design does provide for pedestrian accommodation outside the wall. It adds an attractive element to the garage that has been well-received. It is tied to the tenant space and the retail use.

Pearson wondered why the street vacation if it is an easement. Pedersen stated that they did review that issue and the city does not have authority to grant an easement in right-of-way. In order to grant the easement, we need the vacation. The vacation implies that you are going to sell, but in this case the city will retain the fee ownership and the city has agreed to provide an easement only.

Larson knows what kind of negotiations went on to get this parking garage there and the retail space, and he thinks the Commission needs to do this in order to live up to all the elements of the negotiations.

**2. Paul Ahrendt**, 940 Old Cheney Road, owner of **The Tool House**, testified that he will support this vacation as long as “all the rest of us get equal rights”. What they are doing is good and some of the rest of us in that area need those same rights. If this is approved, he would be in favor of the rest of the businesses having the same type of rights. “Just give us the same rights of using the city property in front of our buildings as you are giving here.”

There was no testimony in opposition.

Staff questions

Marvin wondered whether this opens a pandora’s box where everyone is going to ask for similar type of treatment. Czaplewski stated that the position of the Public Works Department is that the policy in the Haymarket area is still to not vacate right-of-way and the preference is a permit or license to use the right-of-way. This case is different because there was a negotiated contract and there are some obligations to which the city has agreed.

Pedersen further explained that because of the footprint of the building and the design of the parking itself, in order to maximize the parking stalls, the tenant space was located right up to the lot line. He acknowledged that there are other businesses in a similar situation. This is not going to be for parking. The other part is design of the right-of-way. There are improvements to the right-of-way that give adequate pedestrian space, even with the wall. We have room to do that here where we don’t in other instances. He knows there is already another application coming forward. What drove this was the design and plan to have retail space on the corner of this parking garage. This also included maximizing the number of stalls in the parking garage. This was approved by the Urban Design Committee and this vacation is the followup to get the paperwork completed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

May 26, 2004

Larson moved a finding of conformance, seconded by Sunderman.

Carlson thinks it is turning into a great project. This was built to have this use on the corner so that it looks more like a retail space instead of a parking garage. He thinks it accommodates the pedestrian motion.

Motion carried 8-0: Marvin, Krieser, Carlson, Larson, Sunderman, Pearson, Carroll and Bills-Strand voting ‘yes’; Taylor absent. This is a recommendation to the City Council.

**CHANGE OF ZONE NO. 3413**

**FROM R-4 RESIDENTIAL TO R-2 RESIDENTIAL**

**ON PROPERTY GENERALLY LOCATED**

**AT N. 24<sup>TH</sup> STREET AND SUPERIOR STREET.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**

May 26, 2004

Members present: Marvin, Krieser, Carlson, Larson, Sunderman, Pearson, Carroll (absent during vote) and Bills-Strand; Taylor absent.

Staff recommendation: Denial.

Ex Parte Communications: Marvin indicated that he had spoken with Carol Brown earlier today.

Ray Hill of Planning staff submitted an email from Carol Brown requesting deferral until December 8, 2004.

Proponents

**1. Carol Brown**, 2201 Elba Circle, appeared on behalf of the Landon's Neighborhood and the Regalton residents. The ideas for this area have bounced around. Mr. Fortney has been out of town for a long time finishing up another project. They hope to have something in the next six months.

She again referred to the creek that abuts this property which was previously discussed today. It is overgrown with brush, mulberry trees and trash. This creek is so overgrown that it also generates a lot of skunks, opossums, and other critters. These critters come into the Landon's and Regalton neighborhoods and the neighbors walking at night come upon skunks in the neighborhood. This creek needs some attention. Some of it is developed and some of it is not. It is going to be a potential flooding problem. She encouraged that the city take a look at this creek.

Larson moved to defer, with continued public hearing and administrative action on December 8, 2004, seconded by Krieser and carried 7-0: Marvin, Krieser, Carlson, Larson, Sunderman, Pearson, and Bills-Strand voting 'yes'; Carroll and Taylor absent.

**CHANGE OF ZONE NO. 04027**

**FROM R-2 RESIDENTIAL TO O-2 SUBURBAN OFFICE**

**ON PROPERTY GENERALLY LOCATED**

**AT S. 48<sup>TH</sup> STREET AND PIONEERS BLVD.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**

May 26, 2004

Members present: Marvin, Krieser, Carlson, Larson, Sunderman, Pearson, Carroll and Bills-Strand; Taylor absent.

Staff recommendation: Denial.

Ex Parte Communications: None.

Proponents

1. **Peter Katt** appeared on behalf of the applicant who would request that this matter be deferred for an additional two weeks. There is a better than 50% chance that this application will be withdrawn.

Carlson moved to defer, with continued public hearing and administrative action on June 9, 2004, seconded by Krieser and carried 8-0: Marvin, Krieser, Carlson, Larson, Sunderman, Pearson, Carroll and Bills-Strand voting 'yes'; Taylor absent.

**PRELIMINARY PLAT NO. 04005,**

**BURLINGTON NORTHERN INDUSTRIAL CENTER,**

**ON PROPERTY GENERALLY LOCATED**

**AT N. 63<sup>RD</sup> STREET AND FLETCHER AVENUE.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**

May 26, 2004

Members present: Marvin, Krieser, Carlson, Larson, Sunderman, Pearson, Carroll and Bills-Strand; Taylor absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Proponents

1. **Tim Aschoff**, 131-132 S. 13<sup>th</sup> Street, testified on behalf of the developer, LRC. Two weeks ago, the developer had come to agreement with staff on the block length requirement north of McCormick Drive. Initially, the applicant wanted to not put a street north of McCormick Drive, which was consistent with the prior preliminary plat, but the developer does understand

the reasons why staff did not want to do that and will agree to put the street in north of McCormick Drive at such time as the property to the north is developed. That property to the north does contain wetlands and is in the floodplain so he does not believe it will be developed for quite some time.

Marvin inquired whether there was an issue on 70<sup>th</sup> Street and the sidewalk. Aschoff stated that the developer has agreed to make payment to the city and the city will put the sidewalk in when so desired.

Aschoff further advised that the property will be industrially developed. They have developed covenants and the first two uses will be light industrial uses. It is adjacent to the Norvartis warehouse so a potential use could also be similar warehouses.

There was no testimony in opposition.

Pearson inquired whether there are any floodplain areas on this site. If you look at the picture, it looks like there is a creek. Tom Cajka of Planning staff stated that the very north portion is in the floodplain, but it is not a very wide strip. The property is already zoned industrial.

Cajka requested to make a correction to Condition #2.1, deleting the words "except north of McCormick Drive." The only waiver request is block length for Fulton Lane and McCormick Drive.

#### Response by the Applicant

Aschoff stated that at one point several years ago there was a small piece of wetlands that did come onto the property. At the time of the original preliminary plat, the prior owner did obtain permits and had filled in the wetlands, so there are no existing wetlands on the property now.

#### **ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

May 26, 2004

Larson moved to approve the staff recommendation of conditional approval, with the amendment to Condition #2.1 requested by staff, seconded by Marvin and carried 8-0: Marvin, Krieser, Carlson, Larson, Sunderman, Pearson, Carroll and Bills-Strand voting 'yes'; Taylor absent. This is final action, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

**STREET & ALLEY VACATION NO. 03023**  
**TO VACATE THE NORTH 10' OF "Q" STREET**  
**GENERALLY LOCATED AT 8<sup>TH</sup> & "Q" STREETS.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**

May 26, 2004

Members present: Marvin, Krieser, Carlson, Larson, Sunderman, Pearson, Carroll and Bills-Strand; Taylor absent.

Staff recommendation: A finding that the vacation does not conform to the Comprehensive Plan.

Ex Parte Communications: None.

Proponents

1. **Paul Ahrendt of The Tool House**, the petitioner, stated that he wants to do what the city was able to do on the Haymarket parking garage. He wants to use this right-of-way in a manner to sell his product which is no different than a restaurant or what the city is doing with the tenants in the parking garage. He is requesting postponement to learn how to accomplish what the city did with the Haymarket parking garage. He is not asking for any favors. He is just asking for the fair treatment which has just been approved.

Carlson moved to defer with public hearing and administrative action on June 23, 2004, seconded by Carroll and carried 8-0: Marvin, Krieser, Carlson, Larson, Sunderman, Pearson, Carroll and Bills-Strand voting 'yes'; Taylor absent.

**COMPREHENSIVE PLAN AMENDMENT NO. 04002**  
**TO ADOPT THE "LINCOLN AIRPORT F.A.R. PART 150**  
**NOISE COMPATIBILITY STUDY"**

and

**CHANGE OF ZONE NO. 04024**  
**TEXT AND MAP AMENDMENTS TO TITLE 27**  
**TO ADOPT REVISED STANDARDS FOR THE**  
**AIRPORT ENVIRONS NOISE DISTRICT.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**

May 26, 2004

Members present: Marvin, Krieser, Carlson, Larson, Sunderman, Pearson, Carroll and Bills-Strand; Taylor absent.

Staff recommendation: Approval.

Ex Parte Communications: None.



Proponents

**1. Duncan Ross of Planning staff** requested an additional four-week continuance. In the past four weeks, some of the issues that were identified between the city and the Airport Authority were resolved; however, some of the key staff have been out of the office so he is not able to bring forward the result of the discussions and to finalize the modifications to the text amendments.

Larson asked about the restrictions that are in effect in these areas. Ross stated that the proposed regulations put a number of new restrictions on particular uses in the higher noise contours, which are different than the restrictions in the land uses today. Today we have restrictions on residential land uses up to 70 dnl. In the future, the residential restriction would go down to 65 dnl and there are a number of restrictions for particular land uses that are sensitive to aircraft noise. It is a change in the type of uses that will be restricted. Larson wondered if the change from 70 to 65 will cover some existing houses. Ross explained that the area of 65 is generally the same as the area that is 70 today. As a result of the proposed changes, there is a number of areas where housing would be permitted that is not permitted today.

Larson moved to defer, with continued public hearing and administrative action on June 23, 2004, seconded by Krieser and carried 8-0: Marvin, Krieser, Carlson, Larson, Sunderman, Pearson, Carroll and Bills-Strand voting 'yes'; Taylor absent.

**2. Peter Katt** appeared on behalf of **Hartland Homes**. Hartland Homes is not opposed to the deferral, but this needs to move forward on June 23<sup>rd</sup>. Hartland Homes has had a lot of experience and has built a lot of homes in the area of the airport noise environs. The current project Hartland is working on, called Hartland Homes Southwest, located east of SW 27<sup>th</sup> on the south side of A Street, will be nearly finished by spring of next year. As a result of these proposed changes, the property immediately west that is zoned H-4 is on the market and available for purchase, which Hartland acquired in anticipation that these noise standards would change and that property would become available for residential development. There is interest in getting these changes moved forward. When we had discussions with staff beginning last summer, the timeline for this change in the airport noise standards was to have been shortly after the first of the year and now it is June.

**CITY SPECIAL PERMIT NO. 04008 and**  
**COUNTY SPECIAL PERMIT NO. 04019,**  
**WHITETAIL RUN COMMUNITY UNIT PLAN;**  
**ON PROPERTY GENERALLY LOCATED**  
**AT S.W. 14<sup>TH</sup> STREET AND BENNET ROAD.**  
**ADMINISTRATIVE ACTION BY PLANNING COMMISSION**  
**UPON RECONSIDERATION:**

May 26, 2004

Members present: Marvin, Krieser, Carlson, Larson, Sunderman, Pearson, Carroll and Bills-Strand; Taylor absent.

Staff recommendation: Denial.

Ex Parte Communications: None.

Carlson moved to deny, seconded by Pearson.

Carlson supported deferral until the study and he still supports that, but understands the need to move a recommendation forward. Perhaps it is an option for the elected bodies to defer. Since the applicant has requested a recommendation to advance from this body, he would recommend denial, since we do not have any information that indicates that this does not drive up the costs.

Motion to deny carried 6-2: Marvin, Carlson, Larson, Sunderman, Pearson and Carroll voting 'yes'; Krieser and Bills-Strand voting 'no'; Taylor absent. This is a recommendation to the City Council and the County Board.

**CITY PRELIMINARY PLAT NO. 04003 and**  
**COUNTY PRELIMINARY PLAT NO. 04014,**  
**WHITETAIL RUN, ON PROPERTY GENERALLY**  
**LOCATED AT S.W. 14<sup>TH</sup> STREET AND BENNET ROAD.**  
**ADMINISTRATIVE ACTION BY PLANNING COMMISSION**  
**UPON RECONSIDERATION:**

May 26, 2004

Members present: Marvin, Krieser, Carlson, Larson, Sunderman, Pearson, Carroll and Bills-Strand; Taylor absent.

Staff recommendation: Denial.

Ex Parte Communications: None.

Marvin moved to deny, seconded by Carlson and carried 6-2: Marvin, Carlson, Larson, Sunderman, Pearson and Carroll voting 'yes'; Krieser and Bills-Strand voting 'no'; Taylor absent. This is final action on City Preliminary Plat No. 04003, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission. The action on County Preliminary Plat No. 04014 is a recommendation to the County Board.

There being no further business, the meeting was adjourned at 4:20 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on June 9, 2004.

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